

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	
)	
CIRCUIT CITY STORES, INC., et al.,)	Case No. 08-35653-KRH
)	Chapter 11
Debtors.)	(Jointly Administered)

**M&M BERMAN ENTERPRISES' RESPONSE TO DEBTORS'
TENTH OMNIBUS OBJECTION TO CERTAIN DUPLICATE CLAIMS**

M&M Berman Enterprises (the "Claimant"), by counsel, hereby responds as follows to the Debtors' Tenth Omnibus Objection to Certain Duplicate Claims (the "Objection"):

1. On or about February 24, 1995, Circuit City Stores, Inc. (the "Tenant"), entered into a lease, as assigned (the "Lubbock Lease"), with the Claimant for real property located at 6701 Slide Street, Lubbock, Texas, 79424 (the "Lubbock Space").¹

2. On or about February 24, 1995, the Tenant entered into a second lease, as assigned (the "Tyler Lease"), with the Claimant for real property located at 4910 S. Broadway Ave., Tyler, Texas, 75603 (the "Tyler Space").²

3. In January 2009, the Claimant filed a proof of claim (Claim No. 5992) in the amount of \$1,919,500.00 with respect to the Tyler Space. The Debtors' claims processing agent, *i.e.*, Kurtzman Carson Consultants, LLC ("Kurtzman") received Claim No. 5992 on January 13,

¹ A copy of the Lubbock Lease is available upon request.

² A copy of the Tyler Lease is available upon request.

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2009. A copy of Kurtzman's claims register evidencing receipt of Claim No. 5992 is attached hereto as **Exhibit 1**.

4. Also in January 2009, the Claimant filed a proof of claim (Claim No. 5993) in the amount of \$3,097,374.00 with respect to the Lubbock Space. Kurtzman received Claim No. 5993 on January 13, 2009. A copy of Kurtzman's claims register evidencing receipt of Claim No. 5993 is attached hereto as **Exhibit 2**.

5. Claim Nos. 5992 and 5993 (collectively, the "Claims") are the only claims which have been filed on behalf of the Claimant. These Claims were filed by Wayne R. Terry, Esquire, who is one of the Claimant's attorneys.

6. In the Objection, however, the Debtors assert that an additional proof of claim in the amount of \$1,919,500.00 was filed on behalf of the Claimant and in connection with the Tyler Space (*i.e.*, Claim No. 5644). Claim No. 5644 was allegedly received by Kurtzman on January 16, 2009. See Exhibit 1.

7. Accordingly, the Debtors have objected to Claim No. 5992 with respect to the Tyler Space as duplicative and have requested that such Claim be disallowed and survived by Claim No. 5644.

8. In contrast, the Claimant hereby requests that Claim No. 5992 be allowed as the surviving claim on the basis that neither the Claimant nor its counsel has any record of filing Claim No. 5644 with respect to the Tyler Space.

WHEREFORE, for the reasons stated herein, the claimant, M&M Berman Enterprises, respectfully requests that this Court: (a) deny the Debtors' Objection as to the disallowance of Claim No. 5992 as a duplicate claim with respect to Claim No. 5644; and (b) grant such other and further relief to the Claimant as this Court deems just and proper.

Dated: June 29, 2009

M&M BERMAN ENTERPRISES

By: /s/ Michael P. Falzone
Counsel

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Declaration of Wayne R. Terry, Esq.

Mr. Wayne R. Terry, Esq. states as follows:

I am an attorney with the law firm of Hemar, Rouso & Heald LLP in Encino, California, and serve as counsel for M&M Berman Enterprises. I was responsible for filing all of the proofs of claims on behalf of M&M Berman Enterprises, including Claim Nos. 5992 and 5993. Thus, with respect to the factual allegations contained in this Response, I have personal knowledge of such facts and represent that such allegations are true and accurate to the best of my knowledge, information and belief.

Dated: June 26, 2009

By: 
Wayne Terry, Esq.

Title: Counsel for M&M Berman Enterprises

CERTIFICATE OF SERVICE

I herby certify that on this 29th day of June, 2009, a true and correct copy of the above and foregoing was served by the method or methods specified below:

X by **electronically** filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Michael P. Falzone

Michael P. Falzone

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